

1 Creditor 653 28th Street, LLC (“Creditor”) hereby objects (the “Objection”) to the
2 designation made on September 13, 2024 by Debtor in Possession Arcon Construction, Inc.
3 (“Debtor”) in the *Voluntary Petition* [Dkt. No. 1] for this Bankruptcy Case to proceed under
4 Sub-Chapter V and also moves (the “Motion”) the Court to extend the deadline to object
5 pursuant to Federal Rule of Bankruptcy Procedure 1020(b) in the above-captioned matter.

6 The Objection and Motion are based upon the Notice of Objection and Motion, the
7 supporting memorandum of points and authorities set forth herein, the supporting *Declaration of*
8 *Counsel Brian E. Soriano* (“Counsel Decl.”) and all exhibits attached thereto, the supporting
9 *Declaration of Ravi Sadarangani* (“Sadarangani Decl.”), the supporting *Request for Judicial*
10 *Notice* (“RJN”), all other pleadings on file herein, and such other and further arguments and
11 authority as may be presented at the hearing on the Objection and the Motion.

12 I. BACKGROUND FACTS

13 On September 13, 2024 (“Petition Date”), Debtor filed a voluntary petition for relief
14 under Title 11, Chapter 11, Sub-Chapter V, Case No. 24-30679-DM (the “Bankruptcy Case”) in
15 the United States Bankruptcy Court, Northern District of California, San Francisco Division
16 (the “Bankruptcy Court”). (Dkt. No. 1). Christopher Hayes is the duly appointed Sub-Chapter V
17 Trustee in this matter. (Dkt. No. 11).

18 As set forth below, as of the Petition Date, Debtor had aggregate noncontingent,
19 liquidated, secured and unsecured claims of at least \$4,013,021.36, and as such, Debtor is not
20 eligible to proceed as a debtor under Sub-Chapter V in the Bankruptcy Case. See Dkt. Nos. 26,
21 91; Claim Nos. 1-16; Counsel Decl. ¶ 3, Exh. A.

22 As of the date of this Objection, Debtor has not yet confirmed a *Chapter 11 Plan of*
23 *Reorganization* in the Bankruptcy Case. See CM/ECF generally.

24 II. LEGAL ARGUMENT

25 A. Debtor is Not Eligible for Sub-Chapter V – 11 U.S.C. § 1182

26 Section 1182(1) of the Bankruptcy Code provides that “[t]he term ‘debtor’ means a small
27 business debtor.” 11 U.S.C. § 1182(1).

28 In turn, section 101(51D) provides in relevant part that a “small business debtor” means

1 “a person engaged in commercial or business activities . . . that has aggregate *noncontingent*
2 *liquidated secured and unsecured debts* as of the date of the filing of the petition or the date of
3 the order for relief in an amount *not more than [\$3,024,725]* . . . not less than 50 percent of which
4 arose from the commercial or business activities of the debtor.” 11 U.S.C. § 101(51D)
5 (emphasis added).

6 “[A] debt is liquidated if the amount of the debt is readily ascertainable.” *In re Slack*,
7 187 F.3d 1070, 1074 (9th Cir. 1999). Further, “[s]o long as a debt is subject to ready
8 determination and precision in computation of the amount due, then it is considered liquidated
9 and included for eligibility purposes under § 109(e), regardless of any dispute.” *Id.* at 1075.

10 Further, “[a] debt is noncontingent if all events giving rise to liability occurred prior to
11 the filing of the bankruptcy petition.” *In re Fostvedt*, 823 F.2d 305, 306 (9th Cir. 1987).

12 As a threshold matter, when a party challenges debtor’s eligibility to file under a
13 particular chapter of the United States Bankruptcy Code, *the debtor carries the burden* of
14 establishing such eligibility. *See In re Wright*, 2020 WL 2193240, at *2 (Bankr. D.S.C. 2020)
15 (*quoting In re Voelker*, 123 B.R. 749, 750 (Bankr. E.D. Mich. 1990)). In *Wright*, the court
16 extended this general rule to apply to objections to a debtor’s eligibility to elect to proceed under
17 Sub-Chapter V. *Id.*

18 The majority of courts considering the issue have extended this rule when determining a
19 debtor’s eligibility to elect Sub-Chapter V. *See In re Offer Space, LLC*, 2021 WL 1582625, at
20 *2 (Bankr. D. Utah 2021); *In re Ikalowych*, 2021 WL 1546547, at *7 (Bankr. D. Colo. 2021)
21 (*citing In re Sullivan*, 2021 WL 1250805, at *2 (Bankr. D. Colo. 2021) and Tenth Circuit
22 precedent for the proposition that debtors who file under chapters 9 and 12 bear the burden of
23 proving eligibility); *In re Johnson*, 2021 WL 825156, at *4 (Bankr. N.D. Tex. 2021); *In re*
24 *Thurmon*, 2020 WL 7249555, at *1 n. 4 (Bankr. W.D. Mo. 2020); *In re Blanchard*, 2020 WL
25 4032411, at *1-2 (Bankr. E.D. La. 2020) (*citing Wright*); but *see In re Body Transit, Inc.*, 613
26 B.R. 400, 409 n. 15 (Bankr. E.D. Pa. 2020) (stating that “[i]t is appropriate to place the burden
27 of proof on [the creditor], as it is the *de facto* moving party”).

28 Here, as of the Petition Date, Debtor had noncontingent, liquidated claims well in excess

1 of the maximum amount (\$3,024,725) set forth in section 109(e) based on the following:

2 On September 27, 2024, Debtor filed schedules that listed the following claims:

Claimant	Schedule	Amount	Docket No.
Bank of America	D	\$ 37,000.00	26
Ford Motor Credit	D	\$ 4,106.46	26
Ford Motor Credit	D	\$ 7,116.13	26
Lexus Financial	D	\$ 73,923.48	26
Mercedes Benz Financial	D	\$ 20,916.24	26
U.S. Small Business Administration	D	\$ 133,611.20	26
Internal Revenue Service	D	\$ 110,743.50	26
Internal Revenue Service	E	\$ 138,909.05	26
653 28th Street	F	\$ 722,017.46	26
CG Appliances	F	\$ 5,745.00	26
Christopher Hunt	F	\$ 225,253.08	26
Frontier Pacific	F	\$ 2,644.10	26
INM Drywall	F	\$ 10,496.26	26
Law Offices of George Wolff	F	\$ 254,188.09	26
Master Roofing	F	\$ 36,590.00	26
Newity LLC	F	\$ 80,351.00	26
MINFIN-SC-S1 LLC	F	\$ 151,003.00	26
Tenderloin Neighborhood	F	\$ 4,556.27	26
TOTAL		\$ 2,019,170.32	

15 None of these claims were listed as contingent or unliquidated. See Dkt. No. 26.

16 Thereafter, on February 4, 2025, Debtor made certain amendments to its schedules, and
17 added the following 12 previously unscheduled creditors:

Claimant	Schedule	Amount	Docket No.
Crime Watch Security	F	\$ 23,392.30	91
Schindler Elevator	F	\$ 25,529.80	91
United Site Services	F	\$ 11,160.97	91
De Haan & Associates	F	\$ 13,791.00	91
West Coast Insulation	F	\$ 11,019.70	91
L&W Supply	F	\$ 4,360.05	91
Wells Fargo	F	\$ 6,357.32	91
JPMorgan Chase Bank	F	\$ 89,093.21	91
South City Lumber	F	\$ 201,132.00	91
A & V Drywall	F	\$ 39,400.00	91
Nick Mejia Painting	F	\$ 63,700.00	91
American Express	F	\$ 68,124.69	91
TOTAL		\$ 557,061.04	91

26 None of these claims were listed as contingent or unliquidated. See Dkt. No. 91.

27 However, Debtor made one remarkable change, in which it strategically attempted to remove
28 the previously admitted claim of MINFIN-SC-S1 LLC in the amount of \$151,003 without

1 explanation, which was designated as a “Loan.” Compare Dkt. No. 26 with Dkt. No. 91.

2 Based on schedules filed under penalty of perjury in the Bankruptcy Case, Debtor has
3 admitted owing noncontingent, liquidated claims in the aggregate amount of at least
4 \$2,576,231.36 (\$2,019,170.32 + \$557,061.04). However, this does not tell the entire picture.

5 First, there are some large discrepancies between the amount of certain claims listed on
6 the schedules compared to the amount of the filed *Proofs of Claims*, as follows:

Claimant	Scheduled Amount	Claim Amount	Difference
Internal Revenue Service	\$ 138,909.05	\$ 169,692.35	\$ 30,783.30
653 28th Street	\$ 722,017.46	\$ 754,053.29 ¹	\$ 32,035.83
Law Offices of George Wolff	\$ 254,188.09	\$ 254,188.89	\$ 0.80
Nick Mejia Painting	\$ 63,700.00	\$ 130,610.00	\$ 66,910.00
TOTAL			\$ 129,729.93

11 See Claim Nos. 2, 7, 9, 15.

12 Second, Debtor failed to even list the following claims in its schedules:

Claimant	Scheduled Amount	Claim Amount	Difference
Franchise Tax Board	-	\$ 926.44	\$ 926.44
IRS	-	\$ 39,227.32	\$ 39,227.32
Banner Bank	-	\$ 400,725.07	\$ 400,725.07
Andy and Shirly Lee	-	\$ 9,912,200.50	⁻²
TOTAL			\$ 440,878.83

17 See Claim Nos. 1, 7, 14, 16.

18 As the Ninth Circuit has long recognized, eligibility should normally be determined by
19 the debtor’s originally filed schedules, checking only to see if the schedules were made in good
20 faith.” In re Scovis, 249 F.3d 975, 982 (9th Cir. 2001). Here, given that Debtor undervalued
21 claims by \$129,729.93¹ and failed to list claims of at least \$440,878.83, it is axiomatic that
22 Debtor did not file its schedules in good faith, and the Court can look beyond the filed schedules
23 and review the filed *Proofs of Claims* to determine eligibility in this matter. Id.

24 As such, Debtor has previously admitted owing claims in the aggregate amount of at least
25 \$2,576,231.36 (\$2,019,170.32 + \$557,061.04), and in addition, Debtor has unvalued claims by at

27 _____
28 ¹ This amount solely refers to the amount of the judgment.

² For purposes of this Objection, Creditor assumes that this claim is not liquidated given that it is based on pending litigation predicated on tort claims. See Claim No. 16-1.

1 \$129,729.93 and failed to account for claims of at least \$440,878.83, which brings the aggregate
2 amount of noncontingent, liquidated claims to \$3,146,840.12.

3 Third, Creditor obtained a judgment against Debtor pre-petition, and in that judgment,
4 Creditor was deemed the prevailing party and entitled to recover all of its fees and costs,
5 including but not limited to, attorney's fees. See RJN ¶ 1(A), Exh. A. As such, Creditor is
6 entitled to recover \$773,374.08 in attorneys' fees and \$92,807.16 in costs, for an aggregate total
7 of \$866,181.24. See Counsel Decl. ¶ 3, Exh. A.

8 It is axiomatic that these attorney's fees and costs are liquidated for purposes of eligibility
9 because "the amount of the debt is readily ascertainable" and "is subject to ready determination
10 and precision in computation of the amount due." See *In re Slack*, 187 F.3d at 1074-75. As
11 such, for purposes of eligibility, Debtor has additional liquidated claims of at least \$866,181.24,
12 which when added to previously identified amount (\$3,146,840.12), brings Debtor's aggregate
13 noncontingent, liquidated claims to at least \$4,013,021.36.

14 Based on the foregoing, the aggregate amount of Debtor's noncontingent, liquidated
15 claims as of the Petition Date was at least \$4,013,021.36, which is significantly more than the
16 statutory maximum (\$3,024,725) set forth in section 101(51D), and Debtor is not eligible to
17 proceed in Sub-Chapter V in this Bankruptcy Case. See 11 U.S.C. § 101(51D).

18 **B. Extension of Time to Object to Sub-Chapter V Designation**

19 Federal Rule of Bankruptcy Procedure 1020(b) provides in relevant part that "[t]he
20 United States trustee or a party in interest may file an objection to the debtor's statement under
21 subdivision (a) no later than 30 days after the conclusion of the meeting of creditors held under
22 § 341(a) of the Code, or within 30 days after any amendment to the statement, whichever is
23 later." Fed. R. Bankr. P. 1020(b).

24 Here, the section 341(a) First Meeting of Creditors concluded on October 21, 2024, and
25 the original deadline to object to the Sub-Chapter V designation was November 20, 2024. See
26 CM/ECF *generally*. Creditor did not timely object to Debtor's original Sub-Chapter V
27 designation by November 20, 2024, but as set forth below, Creditor's neglect should be excused
28 pursuant to Federal Rule of Civil Procedure 60(b) as set forth below.

1 Pursuant to Federal Rule of Civil Procedure 60(b)(1), “[o]n motion and just terms, the
2 court may relieve a party or its legal representative from a final judgment, order, or proceeding
3 for the following reasons … mistake, inadvertence, surprise, or excusable neglect.” Fed. R. Civ.
4 P. 60(b)(1). Further, Federal Rule of Civil Procedure 60(b)(6) also provides the Court with
5 authority to relieve a party from a final judgment, order, or proceeding for “any other reason that
6 justifies relief.” Fed. R. Civ. P. 60(b)(6).

7 For purposes of Federal Rule of Civil Procedure 60(b)(1), the test for determining
8 “excusable neglect” is well established: it is “at bottom, an equitable one, taking account of all
9 relevant circumstances surrounding the party’s omission.” Pioneer Investment Servs. Co. v.
10 Brunswick Assocs. Ltd. P’ship, 507 U.S. 380, 395 (1993). Such an analysis requires the
11 weighing or balancing of relevant factors, including the following four: (1) the danger of
12 prejudice to the debtor; (2) the length of the delay and its potential impact on judicial
13 proceedings; (3) the reason for the delay, including whether it was within the reasonable control
14 of the movant; and (4) whether the movant acted in good faith. Id. at 395; Pincay v. Andrews,
15 389 F.3d 853, 855 (9th Cir. 2004).

16 As previously recognized by this Court, “[i]n Pincay an *en banc* panel of the Ninth
17 Circuit rejected the concept that certain types of culpable conduct (such as an attorney relying on
18 a paralegal to interpret and abide by a court rule instead of reading and complying with the rule
19 himself) are ‘per se’ not excusable neglect. In so holding, the panel noted that the ‘real question’
20 is ‘whether there [is] enough in the context of [the] case to bring a determination of excusable
21 neglect within the [trial] court’s discretion.’” In re Pac. Gas & Elec. Co., 331 B.R. 915, 918
22 (Bankr. N.D. Cal. 2005) *citing* (Pincay, 389 F.3d at 859)).

23 Here, undoubtedly Creditor’s excusable neglect should be excused under the
24 circumstances and the deadline to object to the Sub-Chapter V designation pursuant to Federal
25 Rule of Bankruptcy Procedure 1020(b) should be extended. See Sadarangani Decl.

26 First, there is simply no danger of prejudice to Debtor. As set forth in Section II.A.
27 above, Debtor: (a) has noncontingent, liquidated claims as of the Petition Date was at least
28 \$4,013,021.36, which is significantly more than the statutory maximum (\$3,024,725) set forth in

1 section 101(51D); (b) originally failed to schedule at least 12 non-disputed creditors, and was
2 required to file amended schedules to list these creditors nearly 5 months *after* the Petition Date
3 (*see* Dkt. No. 91); (c) failed to list at least 4 creditors on its schedules with filed noncontingent,
4 liquidated claims in the aggregate amount of \$440,878.83 (*see* Claim Nos. 1, 7, 14, 16); and (d)
5 undervalued 4 claims in the aggregate amount of \$129,729.93 less than the actual noncontingent,
6 liquidated amount of the claims (*see* Claim Nos. 2, 7, 9, 15).

7 Under these circumstances, the quick deadline set forth in Federal Rule of Bankruptcy
8 Procedure 1020(b) should not act as a shield to deny this Court the ability to adjudicate the
9 propriety of pleadings filed by Debtor *under penalty of perjury* and determine whether Debtor is
10 eligible to proceed under Sub-Chapter V.

11 Second, the original deadline for Creditor to object pursuant to Federal Rule of
12 Bankruptcy Procedure 1020(b) was November 20, 2025, and Creditor filed this Motion just over
13 4 months (April 7, 2025) after expiration of this deadline. As of the date of this Motion, Debtor
14 filed an amended Chapter 11 Plan (Dated March 21, 2025) (the “Proposed Plan”), but given the
15 significant substantive and procedural defects with the Proposed Plan, it is anticipated that the
16 Court will simply deny confirmation and require Debtor to file an amended Chapter 11 plan
17 consistent with the actual facts and the Bankruptcy Code. See Dkt. Nos. 115, 126.

18 As such, extending the deadline pursuant to Federal Rule of Bankruptcy Procedure
19 1020(b) will have no material impact or delay on administration of this Bankruptcy Case, as
20 there are no material deadlines or other hearings currently scheduled before this Court.

21 Third, the primary reason for the delay was that Creditor concentrated its resources on
22 diligently seeking to obtain discovery related to the veracity of pleadings filed by Debtor in the
23 Bankruptcy Case, including attempting to uncover undisclosed estate assets and determining the
24 nature and extent of avoidance actions against insiders, and did not adequately calendar the
25 deadline to object pursuant to Federal Rule of Bankruptcy Procedure 1020(b).

26 Thereafter, Creditor obtained new counsel to represent it in this Bankruptcy Case, and
27 promptly filed this Motion detailing the significant improprieties with Debtor’s schedules and the
28 aggregate amount of noncontingent, liquidated claims as of the Petition Date.

1 Fourth, Creditor has acted in good faith under the circumstances and did not delay filing
2 the Objection or the Motion for any nefarious or improper purpose. Rather, as set forth above,
3 since the beginning of this case, Creditor has taken an active role and the laboring oar in
4 attempting to locate non-disclosed assets of the estate, with limited assistance from other parties
5 in interest with similar motivations, and under the circumstances, Creditor has acted in good faith
6 in this Bankruptcy Case and in filing the Motion.

7 Balancing these factors, Creditor has established that its neglect is excusable under the
8 standard set forth for Federal Rule of Civil Procedure 60(b)(1), and this Court should exercise its
9 discretion to grant the Motion and extend the deadline to challenge eligibility for Sub-Chapter V
10 pursuant to Federal Rule of Bankruptcy Procedure 1020(b). See In re Pac. Gas & Elec. Co., 331
11 B.R. at 919 (“[b]alancing these factors is not a mathematical test, and the court is not obligated to
12 give equal weight to them. Rather, it is to balance the factors together and to determine whether
13 the neglect should be excused”).

14 **III. CONCLUSION**

15 Based on the foregoing, Creditor respectfully requests that the Court enter an order
16 granting the Motion in its entirety, sustaining the Objection in its entirety, extending the
17 deadline pursuant to Federal Rule of Bankruptcy Procedure 1020(b) until the date of the hearing
18 (May 9, 2025), denying Debtor’s attempt to designate the Bankruptcy Case under Sub-Chapter V
19 pursuant to Federal Rule of Bankruptcy Procedure 1020(b), requiring that the Bankruptcy Case
20 be designated as a regular Chapter 11 case, and granting such other and further relief that is just
21 and appropriate under the circumstances.

22
23 Dated: April 8, 2025

MEYER LAW GROUP, LLP

24 By: /s/ BRENT D. MEYER
25 Brent D. Meyer, Esq.
26 Attorneys for Creditor
27 653 28TH STREET, LLC
28